

## § 250.54

from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings.

(c) An applicant that is unable to satisfy the requirements of paragraphs (a) and (b) of this section must affirmatively demonstrate that the proposed issue and sale of a security to finance the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator:

(1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

(d) The Commission shall issue an order with respect to a proposed transaction under section 32(h)(3) of the Act within 120 days of completion of the record concerning such issue, sale or guarantee.

[58 FR 51504, Oct. 1, 1993]

## § 250.54 Effect of exempt wholesale generators on other transactions.

In determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to exempt wholesale generators or foreign utility companies, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator or a foreign utility company

## 17 CFR Ch. II (4-1-98 Edition)

upon the registered holding company system if § 250.53 (a), (b) and (c) are satisfied.

[58 FR 51505, Oct. 1, 1993]

## § 250.57 Notices and reports to be filed under section 33.

(a) *Notification of Status as Foreign Utility Company.* Form U-57 (§ 259.207 of this chapter), notification of status as a foreign utility company, may be filed by, or on behalf of, an entity that seeks to become a foreign utility company. If the criteria of section 33 of the Act are otherwise met, the entity shall be deemed to be a foreign utility company upon the filing of such form.

(b) *Reporting Requirement for Associate Public-Utility Companies.* A United States public-utility company that is an associate company of a foreign utility company shall file with the Commission a report on Form U-33-S (§ 259.405 of this chapter) on or before May 1 of each year. This requirement shall not apply to public-utility companies that are subsidiaries of a registered holding company or of a holding company that is exempt from registration under section 3(a) (1) or (2) of the Act, pursuant to section 250.2. In addition, a holding company that is exempt from registration by Commission order may file a single Form U-33-S on behalf of all of its public-utility subsidiaries.

[58 FR 51505, Oct. 1, 1993]

## § 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) \$50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual

Report on Form 10-K or Quarterly Report on Form 10-Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a holding company that is registered solely by reason of ownership of voting securities of gas utility companies, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For purpose of this section:

(1) The term *energy-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) The rendering of energy management services and demand-side management services;

(ii) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

(iv) The sale of electric and gas appliances; equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity; and equipment that enables the use of gas or electricity as an alternate fuel; and the installation and servicing thereof;

(v) The brokering and marketing of energy commodities, including but not limited to electricity, natural or manufactured gas and other combustible fuels;

(vi) The production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities;

(vii) The sale of technical, operational, management, and other simi-

lar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; and environmental licensing, testing and remediation;

(viii) The development, ownership or operation of “qualifying facilities,” as defined under the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; and

(x) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; *Provided*, That any company engaged in the activities specified in paragraphs (b)(1)(ii), (b)(1)(iii) with respect to electric powered vehicles, (b)(1)(vi), (b)(1)(ix) or (b)(1)(x) of this section, shall be an “energy-related company” for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily electric utility companies; and *Provided further*, That any company engaged in the activities specified in paragraph (b)(1)(iii) of this section with respect to compressed natural gas powered vehicles, shall be an “energy-related company” for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily gas utility companies.

(2) The term *gas-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues

## § 250.60

from temporary investments) from one or more of the following activities within the United States:

(i) Activities permitted under section 2(a) of the Gas-Related Activities Act of 1990, 104 Stat. 2810; and

(ii) Activities specified in section 2(b) of the Gas-Related Activities Act and approved by order of the Commission under sections 9 and 10 of the Act (15 U.S.C. 79i-j).

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company or any subsidiary company thereof.

(c) *Report on related business activities.* For each quarter of the fiscal year of the registered holding company in which any acquisition that is exempt under this section is made, and for each such quarter thereafter in which the acquired interest is held, the registered holding company shall file with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Quarterly Report on Form U-9C-3 (§ 259.208 of this chapter). Such filing shall be made within 60 days following the end of the first three quarters of the fiscal year, and within 90 days after the end of the fourth quarter.

[62 FR 7916, Feb. 20, 1997]

### SOLICITATIONS AND REORGANIZATIONS

#### § 250.60 Meaning of word “authorization”.

The word “authorization”, as used in §§ 250.60 to 250.64 includes “any proxy, consent, authorization, power of attorney, deposit, or dissent”, as those words are used in section 11(g) of the Act (49 Stat. 820; 15 U.S.C. 79k) and “any proxy, power of attorney, consent, or authorization”, as those words are used in section 12(e) (49 Stat. 823; 15 U.S.C. 79l) of the Act.

## 17 CFR Ch. II (4-1-98 Edition)

#### § 250.61 Solicitations other than in connection with a reorganization or transaction which is the subject of an application or declaration.

The solicitation of any authorization regarding any security of a registered holding company or subsidiary company thereof, except solicitations in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of any application or declaration filed with the Commission, shall be subject to all rules and regulations now or hereafter adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 (48 Stat. 895; 15 U.S.C. 78n) that would be applicable to such solicitation if such security were registered on a national securities exchange: *Provided*, That unless such security is actually registered on a national securities exchange, no documents need be filed with any such exchange in connection with such solicitation.

[6 FR 5485, Oct. 28, 1941]

#### § 250.62 Solicitations in connection with a reorganization or transaction which is the subject of an application or declaration.

(a) *General provisions.* No solicitation of any authorization, regarding any security of a registered holding company or a subsidiary company thereof, in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of an application or declaration filed with the Commission, shall be made except pursuant to a declaration with respect to such solicitation which has become effective in the manner prescribed in paragraph (d) of this section.

(b) *Exceptions—*(1) *Solicitations of a limited number.* Paragraph (a) of this section shall not apply to a solicitation of not more than 15 owners of securities or claims (or of such larger number as the Commission for cause shown may, by order, authorize in any case) by any person, either alone or in cooperation or conjunction with others. For the